UNITED STATES PATENT AND TRADEMARK OFFICE

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EXAMINER
BARTLEY, KENNETH

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>27 April 2007</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-44</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-44</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   Receipt of Applicant's affidavit and response filed on April 27, 2007 is
acknowledged.

Response to Amendment

2.   There are no amended claims. Claims 1-44 are currently pending in the
application and are provided to be examined upon their merits.

Response to Arguments

3.   Claims 1-44 are currently pending in the application and are provided to be
examined upon their merits.

4.   The Examiner thanks the Applicant for their remarks and provides responses
below.

5.   I. Objections to the Drawings: Applicant provided new drawings (Figures 10-14)
and the Examiner removes prior objection.

6.   II. Rejection Under 35 U.S.C. § 112: Applicant argues that use of the term
"appetites" is consistent with the specification and with the dictionary definition of the
term. On further consideration the Examiner withdraws the rejection based on input
from the Applicant regarding different uses of the word appetites.

7.   III. Rejections Under 35 U.S.C. §§ 102 and 103: The Applicant notes that claims
1-5, 7-19, and 21-44 were rejected under 35 U.S.C. § 102 (over 2003/0144945 A1 to

Opsahl-Ong) and claims 6 and 20 were rejected under 35 U.S.C. § 103 as obvious in

view of Opsahl-Ong and article from Smith and Moisier. Applicants traverse these

rejections based on 37 C.F.R. § 1.131 from the inventors and that the Applicants

conceived and reduced to practice the invention claimed in the application prior to filing

date of Opsahl-Ong.

8.   The declaration filed on 04/27/2007 under 37 CFR 1.131 is sufficient to

overcome US 2003/0144945 A1 to Opsahl-Ong et al. reference. The Examiner basis

this on evidence provided by Applicant, "Digital Deal Screen" document dated October

2, 2001.

9.   The Examiner has rejected the claims on new ground of rejection. Accordingly

this action is made a non-final action.

Claim Rejections - 35 USC § 101

1.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

Claims 1-17 are rejected under 35 U.S.C. 101 because the claimed invention lacks

patentable utility.

2.   Claims 1 and 8 provide for determining and presenting a probability, but by itself,

presenting a probability is not useful or tangible. To be useful, the claimed invention

must accomplish a practical application (MPEP §2106 II A). For example, a probability

number could be used in deciding to make a loan to an individual. Claims 2-7 and 9-17

are rejected because they depend from claims 1 and 8 respectively.

Claim Rejections - 35 USC § 103

10.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11.   The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating obviousness or nonobviousness.

12.   Claim 1-4, 7-15, 17-18, 21-22, 24-32, 34-37, 39, and 41-44 are rejected under 35

U.S.C. 103(a) as being unpatentable over Pub. No. US 2001/0047326 A1 to Broadbend

et al., in view of Pub. No. US 2001/0039525 A1 to Messmer et al..

[Note that the analysis for the method claim 1 is the same or similar for claims 8, 15, 18, 25, 35, 41, 42, and 44]
Regarding claim 1, 8, 15, 18, 25, 35, 41, 42, and 44:
(claim 1) A computer-implemented method for making a preliminary evaluation of the probability of approval of a real estate transaction comprising the steps of:
Broadbend et al. discloses:
A computer system for approval of real estate transactions... "The present invention relates to the general field of computers, telecommunications, and computer and Internet related systems. More specifically the invention relates to systems and processes to be used in the mortgage industry for combining a customer Loan Application System with an automated Compliance Engine used for generating and monitoring a set of required procedures involved in moving and tracking a mortgage loan through one

or more of the steps of 'originate', 'approve', 'close', 'fund', and 'ship'." ¶ [0010]

receiving identifying information comprising at least one of product type, collateral type, and geographic market;

> **Collateral type and geographic market information can be input into the system (Fig. 9).**

determining whether the identifying information is acceptable;

> **The ability to authenticate a user (Fig. 4A, ref. 403), and check for compliance with regulatory requirements... "The automated compliance engine itself is a system and method for automatically generating a set of required tasks for use in managing the mortgage loan process, including tasks required by applicably federal or state law." ¶ [0025]**

if the identifying information is acceptable, receiving product specific information comprising at least one of an amount of the product, a term of the product, a fee associated with the product, a collateral age, and a collateral income;

> **Amount of a product and term of a product (time plan to keep property) can be input into the system (Fig. 9). Also fees associated with the product can be displayed (Fig. 19).**

determining a probability that the transaction will be approved based on the product specific information; and

> **"If no loan products are available, then the system returns an appropriate notification, and the loan application is forwarded to the lender, with the initial desired loan product, for human review, adjustment, and probable selection of a suitable loan product for underwriting." ¶ [0080]**

presenting the probability.

> **While Broadbend et al. is in the business of real estate transactions, using a computer implemented system, they do not disclose the presenting the probability of a transaction occurring.**

> **Messmer et al., in the same field of endeavor of real estate transactions, discloses:**

>> **"It would be desirable to provide a system that facilitates accurate valuation of a large number of financial instruments in a short period of time and understand the associated probabilities of return and risk for a given bid." ¶ [0005]**

>> **"For example, and still referring to FIG. 2, an unsampled and non-underwritten portion 46 of a third portion 42 of portfolio 12 is subjected to a statistical inference procedure 40 using fuzzy-C**

means clustering ("FCM") and a composite High/Expected/Low/Timing/Risk ("HELTR") score to generate two categories 48 and 50. HELTR is defined as H-High cash flow, E-Expected cash flow, L-Low cash flow, T-Timing of cash flow (for example in months: 0-6, 7-18, 19-36, 37-60), and R-Risk assessment of borrower (9--boxer used by credit analysts)." ¶ [0024]

"Probabilistic recovery values or credit score or any numerical indication of the asset's worth are indicators of worth designated at the discrete asset level. All of the information from the various descriptive attributes is synthesized such that a purchase or sale price can be ascertained as a fixed value or a probabilistic one." ¶ [0036]

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to add during initial evaluation of a real estate transaction, probability of approval, motivated by Messmer et al., and that such information would be useful to loan originators and investors, and could, for example, decrease the likelihood of default or improve returns.

Regarding claims 2, 10, 21, and 27:
(claim 2) The method of Claim 1, wherein the product type is one selected from the group
comprising on-book debt, equity, and mortgage-backed securities.

> **While Broadbend et al. is in the business of real estate transactions, discloses mortgage loans, they do not disclose other product types.**

> **Messmer et al., in the same field of endeavor of real estate transactions, discloses:**

>> **The sale of thousands of commercial loans or other financial instruments sometimes involving the equivalent of billions of dollars in assets must sometimes occur within a few months. Of course, the seller of assets wants to optimize the value of the portfolio, and will sometimes group the assets in "tranches." ¶ [0003**

> **Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to consider other product types, motivated by Messmer et al. who discloses commercial loans and other financial instruments, and that such information would be useful for an investor in terms of categorizing investment types for analysis.**

Regarding claims 3, 13, and 22:
(claim 3) The method of Claim 1, wherein determining whether the identifying information is acceptable comprises:

retrieving predetermined criteria from a data source; and
> **Broadbend et al. discloses:**
> **Fig 4A, ref. 407 provides for comparing origination loan data to available loan products.**

comparing the identifying information to the predetermined criteria.
> **"The Loan Origination & Program Matching module returns a list of loan products for which the borrower is qualified 409. In a preferred embodiment, this function is provided by a PremierPricer.TM." ¶ [0123]**

Regarding claims 4, 14, and 31:
(claim 4) The method of Claim 1, wherein determining whether the identifying information
is acceptable comprises determining a market hurdle for the transaction.
> **Broadbend et al. discloses:**
> **"If no loan products are available, then the system returns an appropriate notification, and the loan application is forwarded to the lender, with the initial desired loan product, for human review, adjustment, and probable selection of a suitable loan product for underwriting." ¶ [0080]. The system is therefore setting thresholds (hurdles) that loans need to meet.**

Regarding claim 7, 17, 24, and 34:
(claim 7) A computer-readable medium having computer-executable instructions for performing the steps recited in Claim 1.
> **Broadbend et al. discloses:**
> **"An embodiment of the Mortgage Loan Management System of the present invention can operate on a general purpose computer unit which typically includes generally the elements shown in FIG. 2. The general purpose system 201 includes a motherboard 203 having thereon an input/output ("I/O") section 205, one or more central processing units ("CPU") 207, and a memory section 209 which may or may not have a flash memory card 211 related to it. The I/O section 205 is connected to a keyboard 226, other similar general purpose computer units 225, 215, a disk storage unit 223 and a CD-ROM drive unit 217. The CD-ROM drive unit 217 can read a CD-ROM medium 219 which typically contains programs 221 and other data." ¶ [0117]**

Regarding claim 9 and 26:
(claim 9) The method of Claim 8, wherein the identifying information comprises a product type.
> **Broadbend et al. discloses:**
> **Fig. 18 provides different product types that a borrower can select.**

Regarding claim 11 and 28:
(claim 11) The method of Claim 8, wherein the identifying information comprises a collateral type.
> **Broadbend et al. discloses:**
> **Fig. 9 provides for collateral type.**

Regarding claim 12 and 29:
(claim 12) The method of Claim 8, wherein the identifying information comprises a geographic market.
> **Broadbend et al. discloses:**
> **Fig. 9 provides for geographic location of the property.**

Regarding claim 30, 43:
(claim 30) The method of Claim 25, wherein comparing the identifying information to initial criteria comprises:

requesting the initial criteria; and
> **Broadbend et al. discloses:**
> **The ability to authenticate a user (Fig. 4A, ref. 403), and check for compliance with regulatory requirements... "The automated compliance engine itself is a system and method for automatically generating a set of required tasks for use in managing the mortgage loan process, including tasks required by applicably federal or state law." ¶ [0025]**

comparing the initial criteria to the identifying information.
> **The ability to compare, where... "The system of the present invention automatically couples the regulatory compliance information engine and a task management system required to process loans and provides methods for integrating the Automate Compliance Engine technology with any third party's loan processing software." ¶ [0025]**

Regarding claim 32:
The method of Claim 25, wherein the product specific information comprises at least one of an amount of the product, a term of the product, a fee associated with the product, a collateral age, and a collateral income.
> **Broadbend et al. discloses:**
> **The amount of a product and term of a product (time plan to keep property) can be input into the system (Fig. 9). Also fees associated with the product can be displayed (Fig. 19).**

Regarding claim 36:
The system of Claim 35, wherein the client is operated by a loan originator to evaluate a real estate transaction.

Broadbend et al. discloses:
"The invention allows loan originators to enter loan applications..." ¶
[0027].

Regarding claim 37:
The system of Claim 35, wherein the client is operated by a customer to evaluate a real estate transaction.

> **Broadbend et al. discloses:**
> **"Referring to FIG. 33, A loan originator, in any of several manifestations, may originate a mortgage loan request on behalf of a client, a `borrower`. The `Loan Application Gateway` provides for the Lender/Loan Originator to enter his data and borrower data 3401..." ¶ [0130]**

Regarding claim 39:
The system of Claim 35, wherein the data source contains current market data.

> **Broadbend et al. discloses:**
> **Fig. 12 provides current market data regarding loan rates.**

13.   Claims 19, 38, and 40 are rejected under 35 U.S.C. 103(a) as being

unpatentable over the references as combined in section (14) above in further view of

Pub. No. US 2002/0152155 A1 to Greenwood et al..

Regarding claim 19:
The method of Claim 18, further comprising determining a rating for the transaction based on the range of acceptable prices using the evaluator software module.

> **While the references as combined above are in the business of real estate transactions, they do not disclose determining a rating.**
>
> **Greenwood, in the same field of endeavor of real estate transactions, discloses:**
>> **"A multi-dimensional database permits drilldowns through the organization and the ability to stratify a lending portfolio by product, risk rating, industry, collateral, original credit size, non-performing status, vintage, and time period. Each multi-dimensional report can be viewed as a data grid or a chart, can be readily modified by the user and can be readily exported to a spreadsheet. User-defined calculations and sorting can also be applied to each report." ¶ [0018]**
>
> **Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to consider rating transactions, motivated by**

Greenwood et al., and that such information would be useful to a company for evaluating the risk of their outstanding loan portfolio.

Regarding claim 38:

The system of Claim 35, wherein the data source contains investment appetites for an investor.

While the references as combined above are in the business of real estate transactions, they do not disclose determining a rating.

Greenwood, in the same field of endeavor of real estate transactions, discloses:

"Using the integrated system (Fig. 1), the ability to use source data for different investment opportunities… "The Portfolio Management component 16 which performs as a combination of workstation software and professional services, enables management to identify revenue opportunities and cross-selling opportunities and to track and identify revenue leakage for either a particular customer or for a specific customer segment of a portfolio." ¶ [0017]

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to consider data sources with different investment types, motivated by Greenwood et al., and that such information would be useful to a company for expanding their investments.

Regarding claim 40:

The system of Claim 35, wherein the data source contains weighting factors selected by an investor for desirable transactions.

While the references as combined above are in the business of real estate transactions, they do not disclose determining a weighting factors.

Greenwood, in the same field of endeavor of real estate transactions, discloses:

"Success of repayment of a consumer loan can be predicted by rating various factors related to the borrower." ¶[0086]

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to consider weighting factors, motivated by Greenwood et al., and that such factors would be useful in managing loans for desirable characteristics.

14. Claims 5-6, 16, 20, 23, and 33 are rejected under 35 U.S.C. 103(a) as being

unpatentable over the references as combined in section (14) above in further view of

Official Notice.

Regarding claims 5, 16, 23, and 33:
5. The method of Claim 1, wherein determining a probability that the transaction
will be approved comprises:
calculating a loan size array;
calculating a minimum price curve; calculating a maximum price curve; calculating a
proceed cutoff curve; and
determining the position of the amount of the product in relation to the minimum price
curve, the maximum price curve, and the proceed cutoff curve.

Regarding claims 6:
The method of Claim 5, further comprising the step of displaying the minimum
price curve, the maximum price curve, and the proceed cutoff curve on a graph.

Regarding claim 20:
The method of Claim 18, further comprising presenting a graph displaying the range of
acceptable prices for the transaction using the evaluator software module.

> **While the references as combined above, disclose calculating expected,
> high and low values, they do not disclose minimum, maximum and cutoff
> curves. However, the Examiner takes Official Notice that creating and
> displaying curves in order to perform financial analysis is old and well
> known. Therefore, it would have been obvious to one skilled in the art at
> the time of invention to include price curves and that such curves would
> help an investor make better and faster decisions regarding investment
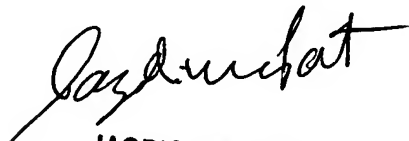> choices.**

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Kenneth L. Bartley whose telephone number is (571)

272-5230. The examiner can normally be reached on Monday through Friday, 8:00 -

5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Jagdish Patel can be reached on (571) 272-6748. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

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USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JAGDISH N. PATEL
PRIMARY EXAMINER